

REMARKS

This amendment is responsive to the Office Action dated January 15, 2004. Claims 1 - 8 are pending in this application and have been rejected.

These remarks follow the order of the detailed Office Action beginning at page 2.

Notice to Applicant

Applicant appreciates the acknowledgment of the entry of the paper filed on October 20, 2003.

Claim Objections

Claim 1 has been amended to correct the grammatical problem. The word "colors" now follows the words "eyeshadow and rouge". It is respectfully that this amendment does not raise new issues regarding patentability.

Claim Rejections - 35 USC § 112

Claim 6 has been amended in order to correct antecedent basis as suggested by the Examiner.

Claim Rejections - 35 USC § 103

Claims 1 - 8 have been rejected under 35 USC § 103 as being unpatentable over Theuerman '736 in view of Gourtou '238.

Applicant respectfully traverses this rejection and respectfully requests reexamination in light of the following discussion of the references and the claims.

Gourtou '238

Applicant respectfully requests that the Examiner review claim 1 of '238 which is reproduced as follows:

1. A method for determining the foundation makeup color that substantially reproduces the natural skin color of a person, which comprises:

- (a) determining the red, green, blue, luminance and saturation coordinates defining the chromatic parameters of the natural skin color of a person under pre-determined lighting conditions, to define therefrom an individual foundation skin color for the person tested;
- (b) comparing the foundation skin color for the person tested with the red, green, blue, luminance and saturation coordinates defining the chromatic parameters of a plurality of reference skin color

foundation colors in a palette of reference foundation colors forming a data base incorporating the skin colors of a representative sample of a population of selected persons; and

(c) selecting the reference foundation color from the palette which most closely approximates the foundation skin color of the person tested, which may be utilized as the foundation makeup color for that person.

Applicant respectfully submits that claim 1 succinctly describes the '238 method and apparatus. Here, Applicant notes that Applicant's claim is also for a method for selecting suitable eyeshadow and rouge cosmetics. Referring now to claim 1 of '238, it can be easily seen that element (a) is merely an element which relates to measuring chromatic parameter of the skin color of a person. This element (a) is the measurement of the person's arm as generally depicted in Figure 1. Element (b) is an element that requires comparison to a plurality of reference skin color foundations in a palette of reference foundation colors. This element (b) is best understood by reference to column 8, lines 62-67. The reference palette prepared in '238 is done in an earlier step by an expert. In element (c) there is a final step of selecting the appropriate reference foundation color from the

palette which most closely approximates the foundation skin color of the person tested. This is the selection process of '238.

'238 is intended to provide a machine (Figure 1) which can allow judgement of appropriate makeup based upon an opinion of an expert without an expert being present on the commercial premises (see column 1, lines 45 - 47 and column 1, lines 52 - 58). It is the intent of '238 to provide a system where the expert's opinion can be used absent the expert. In order to provide such a system, the palettes, as shown generally in Figures 2, 3, 5 and 10, are created. The creation of these palettes, however, is not in accordance with Applicant's claim 1, but instead, in accordance with preparation in an earlier step by an expert as explained in column 8, lines 62 - 67.

The use of the expert in '238 precludes many of the Applicant's claimed steps, such as obtaining through computer graphic methods an average space composition by plurality by a survey of average facial features. . . performing inquiries among a plurality of different races of people for the average face on which eyeshadow and rouge are furnished to receive resulting opinions of those people ('238 uses only the expert's opinion) analyzing resulting opinions and submitting the analysis result for color maps and image maps of the plurality of races. '238 uses the expert to create the palettes, but the palettes are based

upon the expert, not the claimed steps set forth in Applicant's claim 1.

Theuerman '736

Theuerman, as conceded by the Examiner, fails to disclose obtaining through computer graphic methods an average face composition of a plurality of races by a survey of average facial features, skin color, lip color, eye color, etc. The Examiner's discussion in paragraphs (a), (b) and (c) which appear on page 3 and page 4 of the Office Action fail to address numerous elements found in claim 1. In addition to those already enumerated by the Examiner at page 4, lines 12 - 14.

Claim 1 of '736 illustrates the concept of the method taught:

1. A method for determining the color type of a test subject, comprising the steps of:

displaying, to the test subject, a plurality of color tones within a range of a mixed color, each of said plurality of color tones having a different amount of primary color portions contained therein;

selecting, by the test subject, one of said plurality of color tones as a selection;

computing, as a function of the selection, a next plurality of color tones for display to the test subject, the next plurality

of color tones representing, in primary color portions, a closer partial range of the mixed color about the selection;

repeating the steps of selecting and computing, with each next plurality of color tones displayed representing a closer partial range of the mixed color about a respective preceding selection, until a final color tone is selected;

determining, based on the final color tone, a color type of the test subject.

This claim relates to determining the color type of a test subject (preamble). Applicant's claim, on the other hand, relates not to a specific subject, but to a survey of a plurality of people to obtain their opinions and then, through computer graphic methods, obtaining an average face composition. Immediately one can see that '736 does not relate to the claimed invention because of the single test subject.

Next, the claim requires that the test subject select a plurality of color tones as a selection. This is a selection by the test subject for the test subject. There then follows a step of computing and repeating steps of selecting and computing different color tones until a color tone is selected and determination based upon a final color tone color type of the test subject. Therefore, as outlined in claim 1, this patent method relates to the test subject and the test subject selection of a

color, not to the claimed average face composition of a plurality of races by a survey of average facial features, nor to the performing of inquiries of a plurality of different races, nor to the analyzing of resulting opinions, and nor to the use of the color information in order to find matching eye and rouge colors and desirable images from the data. The only thing that '736 provides is something that might be desirable to the person (test subject). Therefore, '736 simply does not relate at all to the subject matter of claim 1 of this application.

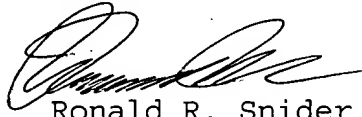
The References When Taken Together

The references when considered individually, as outlined above, simply fail to suggest the elements of claim 1 when taken singly or in combination. Neither reference performs a survey. The Theuerman '736 considers only a single individual. The Gourtou '238, like '736, considers only an opinion of a single person. In '238 the single person is the expert who cannot be present at every place at one time, and, therefore, his opinion is entered into a machine in the form of palettes which are used to determine appropriate expert determined foundation makeup without the presence of the expert.

Since neither reference has the claimed collection of data from a plurality of persons, there is no suggestion or reason to combine them to achieve Applicant's claimed invention.

In view of the foregoing, it is respectfully submitted that the application is now in condition for allowance, and early action in accordance thereof is requested. In the event there is any reason why the application cannot be allowed in this current condition, it is respectfully requested that the Examiner contact the undersigned at the number listed below to resolve any problems by Interview or Examiner's Amendment.

Respectfully submitted,



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